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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re RICHARD JOEY LONGORIA

on Habeas Corpus.

G045031

(Super. Ct. No. 09CF2570)

O P I N I O N

Original proceedings; petition for a writ of habeas corpus to challenge an order of the Superior Court of Orange County, Carla Singer, Judge. Petition granted.

Leslie A. Rose under appointment by the Court of Appeal, for Petitioner.

Kamala D. Harris, Attorney General, and Gary W. Schons, Assistant Attorney General, for Respondent.

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THE COURT:*

Petitioner, Richard Joey Longoria, seeks relief from the failure to file a timely notice of appeal from his criminal conviction. We agree Longoria is entitled to relief, and as such, the petition is granted.

Following a trial, a jury convicted Longoria of two drug related offenses and he was sentenced to a total term of 4 years in state prison. In his declaration, trial counsel states that after Longoria was sentenced, he advised Longoria that he would file a notice of appeal on his behalf. According to trial counsel, he miscounted the days between sentencing and filing the notice of appeal and inadvertently filed the notice of appeal one day late. Although the superior court filed the notice, this court “received” the notice of appeal on the basis that it had not been filed within the statutory 60-day period as required. (Cal. Rules of Court, rule 8.308(a).)

The Attorney General does not oppose granting the petition without the issuance of an order to show cause. (*People v. Romero* (1994) 8 Cal.4th 728.)

The principle of constructive filing of the notice of appeal is applied in situations where trial counsel advises a criminal defendant that he will file a notice of appeal on his behalf, and then fails to do so in accordance with the law. (*In re Benoit* (1973) 10 Cal.3d 72, 87-88.) Because trial counsel has a duty to file a proper notice of appeal on his client’s behalf, (Pen. Code § 1240.1, subd. (b)) Longoria’s reasonable reliance on counsel’s promise to file a timely notice of appeal entitles him to the relief requested.

The petition is granted. The clerk of this court is directed to file forthwith the notice of appeal received by this court on February 17, 2011. Further proceedings are to be conducted according to the applicable rules of court. In the interest of justice, the opinion in this matter is deemed final forthwith.

* Before Rylaarsdam, Acting P. J., Bedsworth, J., and Aronson, J.